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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Implementation of Sections 3
and 14 of the Cable Television
Consumer Protection and
Competition Act of 1992

Rate Regulation and Leased Access

MM Docket No. 92-266

COMMENTS OF THE CITY OF SAN DIEGO

THE CITY OF SAN DIEGO
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TO: THE COMMISSION

COMMENTS OF THE CITY OF SAN DIEGO

The City of San Diego ("City"), a municipal corporation, hereby submits its comments on this Commission's rule-making on rate regulation and leased access.

I. INTRODUCTION

The City has two franchises for cable antenna television: one for the southern 220 square miles of the City with Cox Cable San Diego Inc. ("Cox") and one for the northern 220 square miles with Southwestern Cable Company ("Southwestern"). Although requests for proposals have been solicited in an attempt to have additional operators, these two companies remain the sole franchise-holders within their respective franchise areas.

Cox is currently charging \$14.85 for a 15 channel basic tier service and has approximately a 60% penetration based on the ratio of the number of subscribers (145,099) to the number of residences (239,252) in their franchise areas within San Diego.

Southwestern has approximately a 76% penetration based on a ratio of 154,164 subscribers to 201,437 residences and charges \$11.50 for a 17 channel basic tier.

If this Commission uses a system-wide definition of franchise area, it may impact these penetration percentages for Southwestern which is a subsidiary of Time-Warner, and thereby preclude the City from an opportunity to regulate the basic tier.

II. DISCUSSION

A. CERTIFICATION OF ABSENCE OF EFFECTIVE COMPETITION

The City, as a franchising authority for cable television, feels that it is imperative that it be afforded the opportunity to regulate the basic tier of the two cable operators within its jurisdiction, each of which has the only franchise in their respective areas. It would appear that if the definition of "franchise area" is in fact the area encompassed within each franchise agreement, that there would not be effective competition within San Diego. The City strongly urges this Commission to find that the "franchise area" not be determined on a system-wide basis as suggested by the cable companies, but be limited to the area covered by each franchise that a cable operator has within each jurisdiction. A finding otherwise would circumvent the intent of the 1992 Cable Act and significantly increase the number of jurisdictions in which there is a finding of effective competition and thereby precluding many franchising authorities from an opportunity to regulate the basic tier of service.

The form for certification submitted by franchising authorities to this Commission should be simple and the responsibility of the franchising authority to initiate. If a franchising authority certifies that they are unable to fund the staffing necessary to implement rate regulation, it should be the responsibility of this Commission to undertake the task of regulating the basic tier in the areas where there is a finding of an absence of effective competition.

B. RATE REGULATION

It is the position of the City that it was the intent of the 1992 Cable Act that when there is an absence of effective competition, not only the basic tier but the equipment necessary for the subscriber to obtain the basic tier, should be the subject of regulation by the franchising authority. Furthermore, for at least an initial period of time, there should be no charge for switching from existing service to the basic tier service and there should be only a nominal charge thereafter. The subscriber should be provided at least 90 days notice of the cost and nature of the service provided in the basic tier and have an opportunity to switch to this service free of charge. If subscribers are required to pay an additional charge in order to save money on the basic tier, this will have a chilling effect on many subscribers benefiting from the protections of the 1992 Cable Act.

It is also paramount that the cable operator be required to give sufficient notice to the franchising authority

of any intended increase in rates, whether they be basic tier or other rates, so that properly noticed hearings can be held and/or participation before this Commission by the franchising authority can be undertaken.

If this Commission decides to implement a benchmark formula for determining rates, rather than a cost-of-service approach, this benchmark should be based on an average of the fee charged for the basic tier within those communities across the country where there is effective competition. The selection of communities to include in this calculation should include those with both large and small cable operators and with at least a minimum number of subscribers to the basic tier service.

C. PROCEDURAL ISSUES

The City strongly urges this Commission to undertake any appeals by the cable operators, rather than the court. In order to have an expeditious and effective review of any of the franchising authority's decisions, it is very important that any such decisions be reviewed by an entity who is familiar with the regulations and the very complex and technical rate regulation methodologies. The standard of review should require the cable operators to show by "clear and convincing evidence" that the findings of the franchising authority are erroneous. Hence, both in establishing the rate for the basic tier and determining the absence of effective competition, any challenge by the cable operators should be made to this Commission showing by clear and convincing evidence that the franchising authority's

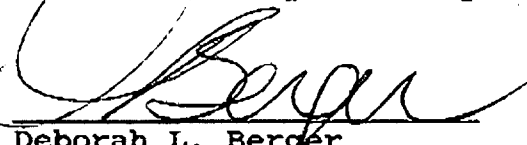
determination was erroneous.

Furthermore, the burden should be born by the cable operator to provide evidence as to: (1) the existence of effective competition within a particular franchise area and (2) the appropriate basic tier rate. It is the cable operator who is the holder of the information necessary for either of these determinations, not the franchising authority. Therefore, it must be incumbent upon the cable operator to present evidence on both of these issues. In addition, it is essential that the franchising authority have the power to review documents upon its request that its feels are necessary for it to render a decision on either of these issues.

Dated this 25 day of January, 1993, at San Diego, California.

Respectfully submitted,

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By 
Deborah L. Berger
Deputy City Attorney

Attorneys for The City of San Diego